

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

- - - - - X

UNITED STATES OF AMERICA :

INDICTMENT

- v. - :

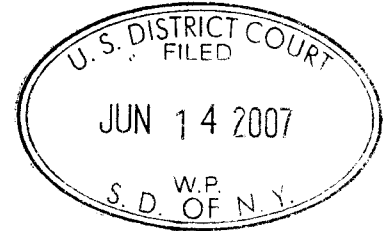
YEHEZKEL ELIA and DAVID ELYAHO, :

07 CRIM. 543

Defendants. :

- - - - - X

COUNT ONE  
(Conspiracy)

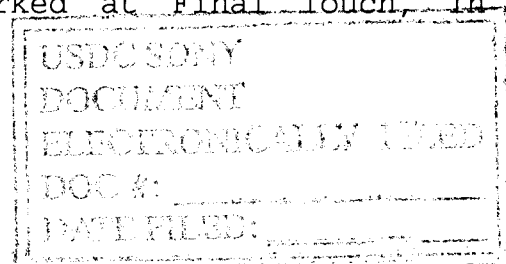


The Grand Jury Charges:

1. At all times relevant to this Indictment, YEHEZKEL ELIA, the defendant, was a resident of Westchester County, New York.

2. From in or about 1999 through in or about 2003, YEHEZKEL ELIA, the defendant, owned and operated various retail stores, which conducted business under the following corporate names: Sneaker Mania, Inc. ("SneakerMania"); Final Touch Jewelry, Inc. ("Final Touch"); and Pizza Mania, Inc. ("PizzaMania"). All of the foregoing entities (collectively referred to herein as the "ELIA CORPORATIONS") were "C" corporations that, pursuant to Internal Revenue laws and regulations, were required to (i) file U.S. Corporate Income Tax Returns, Forms 1120, and (ii) pay corporate income taxes. All of the ELIA CORPORATIONS were controlled, in whole or part, by YEHEZKEL ELIA.

3. At all times relevant to this Indictment, DAVID ELYAHO, the defendant, managed and worked at Final Touch, in



Yonkers, New York, and was active in the day-to-day business of Final Touch.

#### The Conspiracy

4. From in or about 1998 through in or about 2003, in the Southern District of New York and elsewhere, the defendants YEHEZKEL ELIA and DAVID ELYAHO, and others known and unknown to the Grand Jury, unlawfully, willfully and knowingly, did combine, conspire, confederate and agree together and with each other to defraud the United States of America and the Internal Revenue Service ("IRS") by impeding, impairing, defeating and obstructing the lawful governmental functions of the Internal Revenue Service in the ascertainment, evaluation, assessment, computation and collection of income taxes.

#### The Goals of the Conspiracy

5. It was a goal of the conspiracy that YEHEZKEL ELIA and DAVID ELYAHO, the defendants, and their co-conspirators, would and did mislead the IRS as to the true nature of certain financial transactions of Final Touch and the true and correct tax consequences of such transactions. In order to further that goal, the defendants failed to report, on the books and records of Final Touch, cash receipts of that company, which cash the defendants diverted to their own personal use. This false under-reporting of receipts was thereafter carried over to the U.S. Corporate Income Tax Returns of Final Touch, which served to impede and impair

scrutiny of the nature and extent of Final Touch's receipts and ultimate tax liabilities.

6. It was a further goal of the conspiracy that YEHEZKEL ELIA and DAVID ELYAHO, the defendants, and others known and unknown to the Grand Jury, would and did prevent the IRS from ascertaining and determining the personal income and personal income taxes of YEHEZKEL ELIA and DAVID ELYAHO and other employees of Final Touch, for the tax years 1999 through 2002, by siphoning cash out of Final Touch and by distributing that cash to YEHEZKEL ELIA, DAVID ELYAHO and others in a manner designed to avoid reporting those payments on their respective tax returns as personal income.

**Overt Acts in Furtherance of the Conspiracy**

7. In furtherance of the conspiracy, and to effect its objects, the defendants, YEHEZKEL ELIA and DAVID ELYAHO, and their co-conspirators, committed the following overt acts among others, in the Southern District of New York and elsewhere:

a. On or about April 15, 2002, DAVID ELYAHO, the defendant, filed and caused to be filed with the IRS a U.S. Joint Income Tax Return, Form 1040, for tax year 2001.

b. On or about April 15, 2003, DAVID ELYAHO, the defendant, filed and caused to be filed with the IRS a U.S. Joint Income Tax Return, Form 1040, for tax year 2002.

c. Between 1999 and 2003, DAVID ELYAHO, the defendant, maintained a book in which he recorded the division of the cash that he and YEHEZKEL ELIA diverted from Final Touch.

d. On or about September 16, 2001, YEHEZKEL ELIA, the defendant, filed and caused to be filed with the IRS a U.S. Corporate Income Tax Return, Form 1120, for Final Touch for fiscal year ending March 31, 2001.

e. On or about August 16, 2000, YEHEZKEL ELIA, the defendant, filed and caused to be filed with the IRS a U.S. Corporate Income Tax Return, Form 1120, for Final Touch for fiscal year ending March 31, 2000.

f. On or about October 17, 2002, YEHEZKEL ELIA, the defendant, filed and caused to be filed with the IRS a U.S. Joint Income Tax Return, Form 1040, for tax year 2001.

g. On or about October 17, 2003, YEHEZKEL ELIA, the defendant, filed and caused to be filed with the IRS a U.S. Individual Income Tax Return, Form 1040, for tax year 2002.

h. At various times between 1999 and 2003, YEHEZKEL ELIA, the defendant, traveled to the offices of Final Touch to pick up cash.

(Title 18, United States Code, Section 371.)

**COUNTS TWO THROUGH THIRTEEN**  
(Tax Evasion)

The Grand Jury further charges:

**Background**

8. The allegations of paragraphs one and two are repeated and realleged as if fully set forth herein.

**The Tax Evasion Scheme**

9. From in or about 1999 through in or about 2003, YEHEZKEL ELIA, the defendant, engaged in a scheme to evade and defeat a substantial part of the income taxes due and owing by him and the ELIA CORPORATIONS to the United States of America by various means, including, among others:

- A. Filing false and fraudulent U.S. Corporate Income Tax Returns, Forms 1120, with the IRS ("IRS") for the ELIA CORPORATIONS;
- B. Filing false and fraudulent U.S. Individual and Joint Income Tax Returns, Forms 1040;
- C. Diverting cash receipts of certain of the ELIA CORPORATIONS from the bank accounts of those entities and using a portion of that cash for the payment of the personal expenses of YEHEZKEL ELIA.
- D. Paying certain vendors of the ELIA CORPORATIONS through a series of money orders instead of through corporate checks.

**Statutory Allegations**

10. On or about the dates set forth below, YEHEZKEL ELIA, the defendant, did unlawfully, wilfully and knowingly attempt to evade and defeat a substantial part of the income tax due and owing by him to the United States of America totaling approximately \$823,806.00 for the tax years 1999 through 2002, and the defendant did unlawfully, wilfully and knowingly attempt to evade and defeat a substantial part of the income tax due and owing by THE ELIA CORPORATIONS to the United States of America totaling approximately \$846,062.00 for the tax years 1999 through 2002 (some of which operated on fiscal rather than calender years), by various means, including, among others, by (i) preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed with the IRS, false and fraudulent U. S. Individual and Joint Income Tax Returns, Forms 1040, and false and fraudulent U.S. Corporate Income Tax Returns, Forms 1120, which returns falsely omitted income received by YEHEZKEL ELIA and gross receipts received by the ELIA CORPORATIONS set forth below, which falsities caused YEHEZKEL ELIA to substantially understate his taxable income and tax due and owing for each of the tax years listed below, and caused THE ELIA CORPORATIONS to substantially understate their taxable income and tax due and owing for the tax years listed below:

**INDIVIDUAL TAX RETURNS**

COUNT	YEAR	TAX REPORTED	TAX CORRECTED	ADDITIONAL TAX DUE
2	1999	\$ 7,153	\$ 62,127	\$ 54,974
3	2000	\$ 5,797	\$246,978	\$241,181
4	2001	\$16,352	\$290,080	\$273,923
5	2002	\$0	\$253,923	\$253,923

**CORPORATE TAX RETURNS**

COUNT	YEAR	ENTITY	TAX REPORTED	TAX CORRECTED	ADDITIONAL TAX
6	FYE 10/31/00	SneakerMania	\$0	\$237,561	\$237,561
7	FYE 10/31/01	SneakerMania	\$0	\$194,499	\$194,499
8	FYE 10/31/02	SneakerMania	\$0	\$263,110	\$263,110
9	FYE 03/31/00	Final Touch	\$0	\$ 21,034	\$ 21,034
10	FYE 03/31/01	Final Touch	\$0	\$ 20,896	\$ 20,896
11	FYE 03/31/02	Final Touch	\$0	\$ 25,695	\$ 25,695
12	FYE 12/31/01	PizzaMania	\$0	\$ 41,554	\$ 41,554
13	FYE 12/31/02	PizzaMania	\$30	\$ 41,743	\$ 41,713

(Title 26, United States Code, Section 7201)

**COUNTS FOURTEEN THROUGH SEVENTEEN**

(Tax Evasion)

The Grand Jury further charges:

**Background**

11. Paragraphs two and three are repeated and re-alleged as if fully set forth herein.

**The Tax Evasion Scheme**

12. From in or about 1999 through in or about 2003, DAVID ELYAHO, the defendant, engaged in a scheme to evade and defeat a substantial part of the income taxes due and owing by him and others to the United States of America by various means, including, among others:

- A. Causing the filing of false U.S. Corporation Income Tax Returns, Forms 1120, with the IRS ("IRS") for Final Touch;
- B. Filing false U.S. Joint Income Tax Returns, Forms 1040;
- C. Failing to deposit cash revenues from Final Touch into its bank account and using a portion of that cash to pay for the personal expenses of DAVID ELYAHO.

**Statutory Allegations**

13. On or about the dates set forth below, DAVID ELYAHO, the defendant, did unlawfully, wilfully and knowingly attempt to evade and defeat a substantial part of the income tax due and owing



by him to the United States of America totaling approximately \$27,964 for the tax years 1999 through 2002, by various means, including, among other things, by preparing and causing to be prepared, signing and causing to be signed, and filing and causing to be filed with the IRS, false and fraudulent U. S. Joint and Individual Income Tax Returns, Forms 1040, which returns falsely omitted income received by DAVID ELYAHO, which falsities caused DAIVD ELYAHO to substantially understate his taxable income and tax due and owing for each of the below listed tax years:

COUNT	YEAR	TAX REPORTED	TAX CORRECTED	ADDITIONAL TAX DUE
14	1999	\$0	\$8,275	\$8,275
15	2000	\$0	\$6,105	\$6,105
16	2001	\$0	\$7,194	\$7,194
17	2002	\$0	\$6,390	\$6,390

(Title 26, United States Code, Section 7201)

**COUNTS EIGHTEEN THROUGH TWENTY-EIGHT**

(Subscribing to False Individual and Corporate Returns)

The Grand Jury further charges:

14. On or about the dates specified, in the Southern District of New York and elsewhere, YEHEZKEL ELIA, the defendant, unlawfully, wilfully and knowingly did make and subscribe U. S. Joint and Individual Income Tax Returns, Forms 1040, and U. S. Corporate Income Tax Returns, Forms 1120, for the tax years and entities set forth below, which returns contained and were verified by the written declaration of YEHEZKEL ELIA that they were made under penalties of perjury, and which returns YEHEZKEL ELIA did not

believe to be true and correct as to every material matter, in that YEHEZKEL ELIA, the defendant, did not report corporate cash receipts for the ELIA CORPORATIONS and did not report income he received from the ELIA CORPORATIONS on his personal tax returns, whereas YEHEZKEL ELIA then and there well knew and believed that he was not entitled to omit those receipts and income from his tax returns and the tax returns of the ELIA CORPORATIONS.

COUNT	YEAR	ENTITY/RETURN	DATE	FORM
18	FYE 10/31/00	SneakerMania	07/20/01	1120
19	FYE 10/31/01	SneakerMania	02/27/02	1120
20	FYE 10/31/02	SneakerMania	02/24/03	1120
21	FYE 03/31/00	Final Touch	08/16/00	1120
22	FYE 03/31/01	Final Touch	09/16/01	1120
23	FYE 12/31/01	PizzaMania	02/27/02	1120
24	FYE 12/31/02	PizzaMania	02/24/03	1120
25	CYE 12/31/99	Personal	04/15/00	1040
26	CYE 12/31/00	Personal	04/15/01	1040
27	CYE 12/31/01	Personal	10/17/02	1040
28	CYE 12/31/02	Personal	10/17/03	1040

(Title 26, United States Code, Section 7206(1)).

*[Handwritten signature]*  
*for Person*

*[Handwritten signature: Michael J. Garcia]*  
 MICHAEL J. GARCIA  
 United States Attorney

United States District Court  
SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

YEHEZKEL ELIA and  
DAVID ELYAHO

Defendants.

INDICTMENT


07 Cr.

(In Violation of Title 18, United States Code, Section 371;  
Title 26, United States Code, Section 7201;  
Title 26, United States Code, Section 7206(1).)

MICHAEL J. GARCIA

United States Attorney.

A TRUE BILL

  
Foreperson.

6/14/07 Indictment filed  
for, mjs